

not impose a new requirement or change the underlying federal-state relationship established in law; instead, FHWA contends that it does nothing but restate longstanding statutory and regulatory requirements. See Response Letter, at 1-2. We disagree with this characterization. The Memo instructs FHWA staff to encourage states and decision-makers to select certain projects for funding based on FHWA's stated preferences. See Memo, at 4-6.

We previously concluded that where an agency describes actions the regulated community could take to ensure compliance with the law, such statement is a rule for purposes of CRA. See B-331171, Dec. 17, 2020. In B-331171, the Department of Housing and Urban Development (HUD) issued a guidance document containing a step-by-step guide housing providers could follow to ensure they complied with applicable requirements of the Fair Housing Act. Id. at 3. We determined that when an agency provides extra information to aid with statutory compliance, the agency has done more than restate the law; it has implemented law. Id. at 4-5. Here, FHWA went beyond simply restating existing legal requirements; it expressed a policy preference in the Memo and took steps to implement that preference. Thus, as in B-331171, the Memo meets the APA definition of a rule. Having concluded the Memo meets the APA definition of a rule, we now must decide whether any of the CRA exceptions apply. First, the Memo is not a rule of particular applicability, as it applies to all potential grantees for all potential projects. Second, it is not a rule of agency management or personnel. While the Memo is addressed to agency officials and provides instructions to agency personnel, its main focus is the potential projects of potential grantees and other funding recipients. Thus, it goes beyond merely relating to agency matters and does not qualify for the exception. This leaves the exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

FHWA contends the Memo falls within the exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties because the Memo does not bind funding recipients, as they are free to choose to fund any projects that are legally permissible under IIJA. See Response Letter, at 2-3. While the Memo is nonbinding, it does not qualify for the exception.

We have determined previously that agency rules that encourage the regulated community to change internal operations or policies have a substantial impact on non-agency parties and thus do not qualify for the exception. See B-330843, Oct. 22, 2019. In B-330843, we determined that several Federal Reserve memoranda to bank examiners outlining matters to search for during bank examinations were rules. Id. at 7-8. Also, as mentioned previously, we more specifically determined that agency rules that recommend specific actions, such as best practices the regulated community should take, do not qualify for the exception. B-331171 at 4-5. Here, FHWA clearly expresses a preference for specific types of projects and emphatically states the Memo will inform decision-making. Memo at 4-6. Similar to HUD in B-311171, by describing its preferred projects in the Memo, FHWA hoped to induce its regulated community, potential funding recipients, to select those projects. Because FHWA used the Memo to try to induce the regulated community to change their internal priorities, the Memo had a substantial effect and thus does not qualify for the exception.

FHWA argues agency rules that only regulate how the agency communicates with the

public do not have a substantial impact on non-agency parties and thus qualify for the exception. Response Letter, at 2, 4. FHWA cites our decision in B-291906, Feb. 28, 2003, as authority for this proposition, arguing that its Memo is similar to the agency action at issue in that decision. Id. at 2. We disagree; the decision does not stand for the proposition FHWA states. In that decision, we determined a Department of Veteran Affairs (VA) memorandum stopping agency advertisement of veterans benefit programs qualified for the exception. Id. at 5. We came to this conclusion because no veteran was being denied the right to enroll in a benefit program and no enrolled veteran was being dropped. Id. at 3. Veterans were still advised of their benefit rights as required by statute. Id. VA never took active steps to try and alter veterans' behavior. Any changes in enrollment were due solely to the choices of the veterans, as opposed to the facts here. FHWA admits the purpose of the Memo is to get funding recipients to select projects FHWA prefers. Response Letter, at 3. Thus the agency is taking active steps to encourage funding recipients to alter their behavior, and these changes would be taken at the behest of FHWA. When an agency rule actively attempts to induce the regulated community to take preferred steps, the rule has a substantial impact on the regulated community and does not qualify for the third CRA exception.

We acknowledge that states could potentially ignore the preferences that FHWA articulated in the Memo and still receive funding from the agency to implement the projects they prioritize and select, provided that applicable federal requirements have been met. However, because the Memo specifies a goal to inform decisionmaking and goes beyond simply restating the requirements in the law, consistent with our case law, the Memo has a substantial impact despite the non-binding nature of FHWA's preferences and FHWA's lack of a direct role in the selection process. See B-331171, Dec. 17, 2020; B-330843, Oct. 22, 2019.

CONCLUSION

The Memo meets the APA definition of a rule and no exception applies. When an agency rule has the effect of inducing changes to the internal policy or operations choices of the regulated community, that rule has a substantial impact on the rights and obligations of non-agency parties. Thus, the Memo is a rule under CRA and is subject to the submission requirements.

EDDA EMMANUELLI PEREZ,
General Counsel.

NATIONAL DEFENSE AUTHORIZATION ACT

Mr. VAN HOLLEN. Madam President, I rise to speak on the National Defense Authorization Act for fiscal year 2023, which passed the Senate last week. This year's defense bill supports our servicemembers, bolsters our security both at home and abroad, and advances important defense projects across our State. It invests over \$800 million in critical defense assets in Maryland, ensuring they are ready to address the challenges of today and tomorrow. It includes a 4.6-percent pay raise and investments in health and child care benefits to ensure that those who defend our Nation and their families enjoy the economic stability they have earned. And this legislation includes vital improvements to our mili-

tary justice system that we have been fighting to enact for years. Like any bill, this package isn't perfect, but on balance, I believe it will strengthen our national security. I am glad we came together and sent this bill to the President for signature.

In particular, I am very pleased that this NDAA includes the Service to the Fleet Act, which authorizes \$636 million for a major infrastructure overhaul of the Coast Guard yard in Curtis Bay, MD. The yard is the Coast Guard's sole shipbuilding and major repair facility as well as a critical economic driver for Maryland, directly and indirectly creating thousands of good paying, skilled, union jobs. The yard and the hard-working men and women who keep it running need the proper infrastructure and equipment to continue to provide top notch support for the fleet, which is why we must deliver the funds to modernize their World War II-era facilities. Sending this legislation to the President's desk is a major win for Maryland, and I look forward to working with the White House, the Department of Homeland Security, and my colleagues on the Appropriations Committee to ensure that this authorization is fully funded through annual appropriations legislation.

I am also glad that this legislation includes key language from the HBCU RISE Act, which I introduced with Senator TILLIS. This bill aims to spur greater research investment in historically Black colleges and universities and other minority serving institutions while strengthening our national defense research ecosystem. It creates a new program with the U.S. Department of Defense to help HBCUs and MSIs achieve "very high research activity status," also known as "R1" status. Maryland is home to four outstanding HBCUs that provide a quality education for their students and help power American innovation. And with this bill heading to the President's desk we are providing an even greater investment in the success of universities like Morgan State and UMES in Maryland and many others across the country.

Further, I am glad that this legislation includes the pilot program established in the First Lieutenant Hugh Conor McDowell Safety in Armed Forces Equipment Act, which will improve the readiness and safety of the operation of military tactical vehicles. This legislation honors the legacy of First Lieutenant McDowell, a distinguished U.S. marine whose life was cut tragically short as the result of a vehicle rollover accident. It was my honor to offer this legislation alongside Senator CARDIN and Representatives BROWN, WITTMAN, and RUPPERSBERGER, and it is my hope that First Lieutenant McDowell's loved ones will be comforted by the knowledge that, just as he protected his marines in life, First Lieutenant McDowell's legacy will be the protection of future servicemembers from these avoidable accidents.

The FY23 NDAA also includes historic reforms to the military justice system and extends an innovative tool to address the backlog in infrastructure needs at DOD laboratories that is used by multiple Maryland military installations. It includes provisions I authored in the State Department Authorization Act requiring the Department to submit recommendations to Congress to streamline the security clearance process and mandating that passport applicants be given the option to have supporting documents returned to them by certified mail. This legislation also includes the Water Resources Development Act, which advances several key Maryland priorities, such as resources to ensure our shipping channels and other waterways remain clear and accessible for navigation, support for a variety of local water infrastructure projects, and funding authorization for Chesapeake Bay watershed environmental restoration. Lastly, this bill includes funding and language that is critical to supporting Maryland's military installations, including \$175 million in authorized military construction. The bill also includes report language ensuring the Army's continued support for the demolition of contaminated facilities at Aberdeen Proving Ground.

While I am pleased with many of the provisions included in this bill and voted for its passage, I do have significant reservations.

I believe it is a mistake to continue funding for the research and development, production, or deployment of the nuclear-armed sea-launched cruise missile—SLCM-N—and its associated nuclear warhead. The United States already possesses an array of nonstrategic nuclear capabilities that fulfill our theater nuclear deterrence missions and reassure our allies of our extended deterrence commitments. In its 2019 cost estimate of U.S. nuclear weapons programs, the CBO projected that the SLCM-N would cost \$9 billion through 2028. This projection does not account for production costs after 2028, nor does it factor in costs associated with integrating the missile on ships, nuclear weapons training for personnel, and storage and security for nuclear warheads on naval bases. Not only is the program a waste of money, it will also dangerously raise the risk of nuclear miscalculation and escalation.

I regret that the bill does not include the Upholding Human Rights Abroad Act, which I introduced with Representative JACOBS to close a loophole that allows some U.S. security assistance to foreign forces without being subject to Leahy Law restrictions that bar U.S. military assistance to units credibly believed to have engaged in gross violations of human rights. This is a simple, straightforward matter of the United States living up to our most basic commitments as a member of the international community.

I also regret that the bill does not include the District of Columbia Na-

tional Guard Home Rule Act, which would give the D.C. Mayor the same control over the D.C. National Guard that the Governors of the States and Territories have over their National Guards. The attack on the U.S. Capitol on January 6, 2021, and the events at Lafayette Square on June 1, 2020, are prime examples of why the D.C. Mayor should control the D.C. National Guard. Denying this authority to the D.C. Mayor adds needless layers of bureaucracy between the emergency of a situation requiring the deployment of the Guard and its actual deployment. Moreover, current law creates a dangerous loophole by which a President may evade the Posse Comitatus Act and use the military for civilian law enforcement. I will continue to work with Senator CARPER and Representative NORTON to pass this legislation in the next Congress.

Finally, I believe that this bill fails to reckon seriously with the long-term budget challenges facing our country. We simply cannot afford to continue this level of investment in defense at the expense of other critical national priorities. I oppose the decision to invest an additional \$45 billion over the President's budget request for defense while we continue to underinvest in diplomacy, development, and a wide range of critical domestic priorities.

While I am opposed to some of the provisions in this bill and disappointed by the omission of others, I believe that, on balance, the NDAA will strengthen our national security and advance other important national priorities. For that reason, I voted in support of final passage.

175TH ANNIVERSARY OF THE U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT

Mr. CARDIN. Madam President, I rise on behalf of myself and my colleague Senator VAN HOLLEN to congratulate the Army Corps of Engineers, Baltimore District, on the occasion of its 175th anniversary. The Baltimore District has a long and storied history from the early 1800s and the construction of Fort McHenry, protecting Baltimore against British attacks in the War of 1812. When the threat of coastal attack diminished in the 1820s, the Baltimore District turned its attention to work that signified the start of its civil works mission, developing roadways, railways, canals, and more. Today, the Baltimore District's mission is to deliver vital engineering solutions in collaboration with its partners to strengthen the Nation, energize the economy, and reduce disaster risks. With approximately 1,200 employees, the District's work spans Maryland; northern Virginia; Washington, DC; West Virginia; Pennsylvania; Delaware; lower central New York; overseas locations; and across the Susquehanna, Potomac and Chesapeake Bay watersheds.

The Baltimore District has an extensive flood risk management program,

inspecting nearly 150 miles of levee systems and operating 16 dams, contributing to the prevention of more than \$16 billion in flood damages to date. The District maintains 290 miles of Federal channels, including dredging for Baltimore Harbor, from which material is used beneficially in projects such as the expansion of Poplar Island in the Chesapeake Bay and the construction of the Mid-Chesapeake Bay Island Ecosystem Restoration project. The District carries out important restoration work for native oyster populations in the Bay. The Baltimore District is the only district to operate a public utility—the Washington Aqueduct—that produces an average of 135 million gallons of drinking water per day at two treatment plants for approximately 1 million people living, working, or visiting the National Capital Region. The District also cleans up Formerly Used Defense Sites, decommissions and deactivates former nuclear power plants, and performs clean-up of low-level radioactive waste from the Nation's early atomic weapons program. The Baltimore District executes a robust military construction program and provides real estate services. These civil and military missions and diverse engineering services support communities and our military while protecting our national security. With today's ever-evolving and complex challenges, the urgency of climate change, and the connections between ecosystem health, environmental quality, and economic growth, the work of the Baltimore District is more vital than ever.

Senator VAN HOLLEN and I congratulate the Baltimore District on its 175th anniversary; we are proud of its headquarters' presence in Baltimore, and we look forward to its ongoing and future collaborations in Maryland and the wider region it serves.

RECOGNIZING HELP COMMITTEE STAFF

Mrs. MURRAY. Madam President, I ask that the following names be placed in the RECORD in recognition of the outstanding service of my staff on the Committee on Health, Education, Labor, and Pensions over the past 8 years. I thank them all for their service.

Lori Achman, Wade Ackerman, Anali Alegria, Vivianne Anguiano, Kalah Auchincloss, Katlin McKelvie-Backfield, Mary Barry, Nick Bath, Lauren Battle, Amanda Beaumont, Katie Berger, Jane Bigham, Katherine Blizinsky, Sarah Bolton, Kathleen Borschow, Remy Brim, Aissa Canchola, Greg Carter, Scott Cheney, Molly Click, Leslie Clithero, Megan Colon, Manuel Contreras, Jake Cornett, Jeff Crooks, Sarah Cupp, Elizabeth Darnall, John D'Elia, Garrett Devenney, Abigail Durak, Okey Enyia, Ariel Evans, Amanda Ferguson, Chris Fisk, Ian Foss, Andi Lipstein Fristedt, Christy Gaines, Jose Garcia, Sabah Ghulamali, Colin Goldfinch, Sabrina Gonzalez, Melissa Greenberg, Laura Gyamfi, Tiffany Haas, Helen Hare, Nichole Holm, Leanne Hotek, Megan Howard, Michael Huggins, Kendra Isaacson,